

TO: Services Committee Members
FROM: Sue Lessard, Town Manager
DATE: June 14, 2012
RE: Outdoor Facilities Ordinance & Map

The purpose of this memo is to transmit the latest version of the draft Outdoor Facilities Ordinance. The following changes have been made as a result of the Services Committee meeting held on June 11, 2012.

1. The Introduction of the Ordinance has had language added to clarify that its adoption includes the repeal of Papermill Road Rec Area and Dorothea Dix Park ordinances.
2. Section 4.1 Definitions, Outdoor facility has been amended to include clarifying language that property covered by the ordinance is limited to that for which the Town of Hampden is the deeded owner.
3. Section 4.1 Definitions, Sports Fields has been amended to include clarifying language that limits these entities to those that have been formally designated as such by the Town Council.
4. Section 5.2 Firearms/hunting has been amended to eliminate "other than law enforcement personnel" from the section and added section 5.2.1 Exceptions.
5. Section 5.9 Animals has been amended to change the word 'into' to 'to' in the first sentence and to replace 'on a leash' with 'under the owners control'.
6. Section 7.1 has been changed to add enforcement provisions for law enforcement and the ability to revoke usage permissions added for the Town Forester and Code Enforcement Officer.
7. Section 7.2 has been eliminated as redundant with changes made to section 7.1

The map that is attached shows the parcels for which the Town of Hampden is listed as the record owner. The reason that there are two designations (one plain and one cross-hatched) is that when the open space parcels for several subdivisions were added, they were listed under Map 9 lot 18 which is the map and lot for the Town Office property. They are reflected in the correct location on the map and staff will be working to correct the designation locations in the assessing database as well.



Susan Lessard <manager@hampdenmaine.gov>

Outdoor Facilities Ordinance

1 message

Thomas A. Russell <tar@frrlegal.com>
To: Susan Lessard <manager@hampdenmaine.gov>

Mon, Jun 18, 2012 at 12:39 PM

Susan:

As we discussed, the changes you made to the Ordinance were based on an earlier version of the document, not the one I edited on April 5th. Please find enclosed a version of the April 5th draft that incorporates the changes agreed upon by the Services Committee. My edited version had included repeal language in Section 1 and an effective date provision as Section 10.

Also, I have deleted the "no hunting" provisions from Section 5.2, as the Legislature enacted a statute in 2003 that provides that a municipality "may not enact any ordinance, law or rule regulating the hunting, trapping or fishing of any species of fish or wildlife..." [12 M.R.S. §13201]. Like 25 M.R.S. §2011, 12 M.R.S. §13201(1) also permits a municipality to regulate the discharge of firearms. I have attached a copy of the statute. Sorry I did not catch that sooner, but my earlier Memorandum was focused on the "carry" issue. As I reviewed your draft on Friday, I recalled litigation in Orono a number of years back when its discharge ordinance created a "shotguns only" zone, and the ordinance was challenged based on the argument that by regulating the type of firearm that could be discharged, the ordinance was effectively regulating hunting, which was prohibited under state law. In response to the lawsuit, the Town Council amended the ordinance to prohibit all firearm discharges in that zone, which is permitted under the statute.

I have attached both a "compare" and a "clean" version of the Ordinance. Please give me a call if you have any questions or comments. Tom

Thomas A. Russell

Farrell, Rosenblatt & Russell

61 Main Street, Suite 1

P.O. Box 738

Bangor, ME 04402-0738

(207) 990-3314

3 attachments

 **OutdoorFacilitiesOrdinance compare 06 18 12.docx**
36K

 **OutdoorFacilitiesOrdinance CLEAN 06 18 12.docx**
33K

 **12 MRS Sec 13201.pdf**
46K

Maine Revised Statutes

- §13201 PDF
- §13201 WORD/RTF
- STATUTE SEARCH
- CH. 941 CONTENTS
- TITLE 12 CONTENTS
- LIST OF TITLES
- DISCLAIMER
- MAINE LAW
- REVISOR'S OFFICE
- MAINE LEGISLATURE

§13161

Title 12: CONSERVATION

Part 13: INLAND FISHERIES AND WILDLIFE

HEADING: PL 2003, C. 414, PT. A, §2 (NEW); PT. D, §7 (AFF); C. 614, §9 (AFF)

Subpart 7: LOCAL REGULATION HEADING: PL 2003, C. 414, PT. A, §2 (NEW); PT. D, §7 (AFF); C. 614, §9 (AFF)

Chapter 941: LOCAL REGULATION HEADING: PL 2003, C. 414, PT. A, §2 (NEW); PT. D, §7 (AFF); C. 614, §9 (AFF)

§13201. Limits on local regulation

A municipality or political subdivision of the State may not enact any ordinance, law or rule regulating the hunting, trapping or fishing for any species of fish or wildlife; the operation, registration or numbering of all-terrain vehicles, watercraft or snowmobiles or any other subject matter relating to all-terrain vehicles, watercraft or snowmobiles regulated under chapter 935 or 937 or under any other provisions of this Part, except that a municipality may regulate the operation of all-terrain vehicles on municipal property and on rights-of-way and easements held by that municipality. For purposes of this section, except as provided in subsection 3, the regulation of fishing includes the regulation of ice fishing shacks. This section does not prohibit: [2003, c. 614, §9 (AFF); 2003, c. 655, Pt. B, §421 (AMD); 2003, c. 655, Pt. B, §422 (AFF).]

1. Firearm discharge. The enactment of any ordinance generally regulating the discharge of firearms in a municipality or any part of a municipality;

[2003, c. 414, Pt. A, §2 (NEW); 2003, c. 614, §9 (AFF) .]

2. Certain rules. The adoption of rules as authorized in section 13051; or

[2003, c. 414, Pt. A, §2 (NEW); 2003, c. 614, §9 (AFF) .]

3. Ice fishing shacks. The enactment of any ordinance regulating ice fishing shacks on:

A. Sources of public water supply as provided under Title 22, section 2642; or [2003, c. 414, Pt. A, §2 (NEW); 2003, c. 614, §9 (AFF).]

B. Coastal waters as defined in section 6001, subsection 6. [2003, c. 414, Pt. A, §2 (NEW); 2003, c. 614, §9 (AFF).]

[2003, c. 414, Pt. A, §2 (NEW); 2003, c. 614, §9 (AFF) .]

SECTION HISTORY

2003, c. 414, §A2 (NEW). 2003, c. 414, §D7 (AFF). 2003, c. 614, §9 (AFF). 2003, c. 655, §B421 (AMD). 2003, c. 655, §B422 (AFF).

Data for this page extracted on 02/01/2012 10:00:36.

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public. If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes

**7 State House Station
State House Room 108
Augusta, Maine 04333-0007**

**TOWN OF HAMPDEN, MAINE
OUTDOOR FACILITIES ORDINANCE**

ENACTED DATE: MONTH, XX, 2012,
EFFECTIVE DATE: MONTH, XX, 2012,

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CERTIFIED BY: _____
Name

Title Affix Seal

**TOWN OF HAMPDEN, MAINE
OUTDOOR FACILITIES ORDINANCE
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**THE TOWN OF HAMPDEN HEREBY ORDAINS THAT THE FOLLOWING
ORDINANCE BE ADOPTED.**

**ARTICLE I.
PURPOSE**

1.1 Purpose. The purpose of this Ordinance is to provide rules and regulations for the use of and conduct in outdoor facilities situated in Hampden. This Ordinance ~~hereby repeals the~~ Dorothea Dix Park Ordinance (adopted 10/16/89) and Papermill Road Recreation Area Ordinance (last amended 5/18/09).

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**ARTICLE II.
AUTHORITY**

2.1 Authority. Pursuant to the provisions of Title 30-A M.R.S. Sections 3001 and 3281-3284 and the Charter of the Town of Hampden, Article II, Section 212, and Article III, Section 302, there is hereby established an Outdoor Facilities Ordinance to be organized, administered and governed in accordance with the following provisions.

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**ARTICLE III.
APPLICABILITY**

3.1 Applicability. This Ordinance provides full power and authority over all outdoor facilities within the Town.

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**ARTICLE IV.
DEFINITIONS**

4.1 Definitions. Unless specifically defined below, words and phrases used in this Ordinance shall have the customary dictionary definitions that give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Deleted: same meaning as they have at common law and to

Alcoholic Beverage: any beverage containing any amount of alcohol as regulated under state law.

Controlled Substance: any legal or illegal drug, narcotic, hallucinogen, opiate, prescription drug, or any other such substance regulated by state or federal law.

Motorized Vehicle: any vehicle that is propelled by an engine, including but not limited to: cars, trucks, motorcycles, snowmobiles, ATVs, OHVs, dune buggies, dirt bikes, three-wheelers, go-karts, and golf carts.

Outdoor Facility: any park, sports field, forest, wooded area, field, playground, or other property for which the Town of Hampden is the deeded owner.

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Parks: Includes the following outdoor facilities: Dorothea Dix Park, Papermill Road Recreation Area, Western Avenue Recreation Area, or other areas designated as such.

Deleted: public properties

Public Safety Department: Includes Police, Fire, and Emergency Medical Services (EMS) Departments.

Sports Fields: Includes the following outdoor facilities: Ball Field Road Ball Field, VFW Recreation Area, Western Avenue Recreation Area, or other areas formally designated as such by the Town Council.

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Tobacco Products: cigars, cigarettes, chewing tobacco, snuff, or any other product containing tobacco as regulated under state law.

ARTICLE V. PROHIBITIONS

5.1 Camping. No person shall set up tents, shacks, or any other temporary shelter for the purpose of overnight camping in outdoor facilities, nor shall any person leave in outdoor facilities after closing hours, any movable structures or special vehicle that could be used for such purposes. Upon prior approval of a law enforcement officer of the Town of Hampden, overnight camping may be permitted in situations involving unique circumstances.

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5.2 Discharge of Firearms. No person shall discharge a firearm within parks or sports fields as defined herein.

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5.2.1 Exceptions – The foregoing prohibition on the discharge of firearms shall not apply to the firing or discharge of firearms at any military exercise or review; nor to any military personnel or law enforcement officers in the performance of their duties or authorized training; nor to any person in the lawful defense of his or her person, family, or property.

5.3 Fires. No person shall kindle, build, maintain or use a fire except in areas designated for such purposes. All fires shall be properly extinguished before the person utilizing the same leaves the outdoor facility. Any fires shall be continuously under the care and supervision of a competent person from the time it is kindled until it is extinguished. Fires may be prohibited by the Recreation Director, Town Forester, and or employees of the Public Safety Department when, in his or her judgment, the conditions are such that any fire would represent a safety hazard.

5.4 Wood. No person shall cut any wood on any outdoor facility without a prior permit from the Town Forester, who shall have the discretion to deny any application for such a permit if he or she determines that the proposed activity is inconsistent with the goals of the forest management plan for the property.

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Town of Hampden, Maine
Outdoor Facilities Ordinance

5.5 **Alcoholic Beverages.** No person shall consume or be under the influence of alcoholic beverages in any outdoor facility.

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5.6 **Tobacco Products.** No person shall consume or use tobacco products within any outdoor facility.

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5.7 **Controlled Substances.** No person shall consume or use any controlled substance legal or illegal while within any outdoor facility, unless the person has a labeled container and proof of prescription.

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5.8 **Trash.** No person shall scatter, drop or leave any debris trash or other rubbish within any outdoor facility except in receptacles provided for that purpose.

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5.9 **Animals.** All animals brought into any outdoor facility shall be under the owner's control at all times so as to not interfere with the enjoyment of the outdoor facility by other members of the public, if present. No animal shall be off a leash at any time at any sports field as defined herein, or at any part of the Western Avenue Recreation Area. Owners shall pick up after their animals.

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5.10 **Motor Vehicle Access.** Access to outdoor facilities by motor vehicles shall be governed by the rules for that facility contained in the Recreation Department policy document "Outdoor Facilities Rules and Regulations." Upon prior approval of a law enforcement officer of the Town of Hampden, motor vehicle access may be permitted in situations involving unique circumstances. For specific restrictions for each outdoor facility, please refer to the Recreation Department policy document "Outdoor Facilities Rules and Regulations." Motor vehicle access to a facility's parking area is allowed, as this section is meant to address access to parts of facilities that are not meant for motor vehicles.

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5.11 **Other Vehicles Prohibited.** No person shall operate a trail bike, all terrain vehicle, snowmobile, or any other motorized recreational vehicle within any outdoor facility except for on designated trails or areas, or for purposes of maintenance or rescue.

ARTICLE VI.
OPERATION

6.1 **Hours & Dates of Operation.** Outdoor facilities shall be open to the public from a half hour before dawn to an hour after sunset. Outdoor facilities are open 365 days a year as weather allows. For information on reservations, which facilities are plowed during the winter, and closing times for areas with artificial lighting, please see the Recreation Department policy document "Outdoor Facilities Rules and Regulations." Snowmobiles are permitted after dark on designated trails.

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ARTICLE VII.
ENFORCEMENT

7.1 **Law Enforcement.** Any law enforcement officer of the Town of Hampden shall have the authority to enforce the provisions of this Ordinance and revoke the permission of any individual

to use an outdoor facility when the officer observes, or has probable cause to believe, that such individual has violated any provisions of this Ordinance, committed a civil infraction within the facility, or has violated any provision of the laws and Ordinances of the State of Maine or the Town of Hampden within the facility. The Recreation Department, Town Forester and Code Enforcement Officer also ~~have~~ the authority to revoke the permission of any individual to use an outdoor facility if they are found to have violated the provisions of this Ordinance.

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7.2 Enforcement Mechanism. This Ordinance may be enforced by the institution of legal or equitable proceedings in court, including proceedings pursuant to 30-A M.R.S. §4452.

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7.2 Alternative Enforcement. The Recreation Director and his or her subordinate employees shall be empowered to enforce the provisions of this Ordinance. In addition, the Town Forester, Code Enforcement Officer and the members of Hampden Public Safety shall also have the ¶ authority to enforce the provisions of this Ordinance.¶

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**ARTICLE VIII.
PENALTIES**

8.1 Penalties. Any person, firm or corporation violating any provisions of this Ordinance shall be fined not less than Twenty-Five Dollars (\$25.00) nor more than One Hundred Fifty Dollars (\$150.00) for each violation. Each day that such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any fines recovered shall inure to the benefit of the Town of Hampden.

**ARTICLE IX.
SEVERABILITY**

9.1 Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed as a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**ARTICLE X.
EFFECTIVE DATE**

10.1 Effective Date. Pursuant to Section 213(c) of the Town Charter, this Ordinance shall become effective at the expiration of 30 days after its adoption by the Town Council.

**TOWN OF HAMPDEN, MAINE
OUTDOOR FACILITIES ORDINANCE**

ENACTED DATE: MONTH, XX, 2012
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CERTIFIED BY: _____
Name

Title Affix Seal

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to use an outdoor facility when the officer observes, or has probable cause to believe, that such individual has violated any provisions of this Ordinance, committed a civil infraction within the facility, or has violated any provision of the laws and Ordinances of the State of Maine or the Town of Hampden within the facility. The Recreation Department, Town Forester and Code Enforcement Officer also have the authority to revoke the permission of any individual to use an outdoor facility if they are found to have violated the provisions of this Ordinance.

7.2 Enforcement Mechanism. This Ordinance may be enforced by the institution of legal or equitable proceedings in court, including proceedings pursuant to 30-A M.R.S. §4452.

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**ARTICLE IX.
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9.1 Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed as a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**ARTICLE X.
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10.1 Effective Date. Pursuant to Section 213(c) of the Town Charter, this Ordinance shall become effective at the expiration of 30 days after its adoption by the Town Council.